

TIME CERTAIN
ITEM NO. 4
3:00 PM

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL CORRESPONDENCE
SAN ANTONIO METROPOLITAN HEALTH DISTRICT**

TO: Mayor and City Council

FROM: Fernando A. Guerra, M.D., M.P.H., Director of Health

THROUGH: Terry M. Brechtel, City Manager

COPIES: Frances A. Gonzalez, Assistant to the City Manager; File

SUBJECT: REVISIONS TO CITY CODE CHAPTER 36, ENTITLED "SMOKING"

DATE: August 7, 2003

SUMMARY AND RECOMMENDATIONS

This ordinance will revise City Code Chapter 36, entitled "Smoking", to make necessary changes, revisions, and deletions regulating smoking in certain establishments within San Antonio City limits and providing penalties for non-compliance.

Staff recommends approval.

BACKGROUND INFORMATION

Since 1986, the City has prohibited smoking in public elevators, common areas of city buildings, enclosed public halls, buses, and taxis. In addition, restaurants with over fifty (50) seats must provide smoking and non-smoking areas. The City also allows employers to prohibit smoking in all or part of a workplace.

In 1992, the City further prohibited tobacco product sampling, vending machines within a half-mile of public schools, and smoking in shopping malls and municipal airports. By an ordinance passed and approved in 1996, the City further prohibited cigarette vending machines from businesses that admit youths.

The Council considered an ordinance in 1997 that would extend the smoking ban to common indoor work areas, public places, and all eating establishments, except those that had separate HVAC systems for both smoking and non-smoking areas. After considerable debate and public input, the proposed revision was not adopted.

In recent months, many cities in Texas and throughout the United States have adopted more restrictive or even total public smoking bans due to growing evidence that environmental tobacco smoke can be harmful to non-smokers. These public health concerns have sparked a

desire by the Mayor and City Council to pursue a process to review and update the current smoking ordinance (City Code Chapter 36).

An initial public hearing was held on May 22, 2003 at 5:30 p.m. in City Council Chambers. Issues raised at that meeting included: the rights of smokers versus those of non-smokers; health concerns for children with asthma and persons with other health issues; economic costs of a new ordinance; the economic impact on restaurants and bars; possible exemptions to a smoking ban; and the plight of employees working in establishments that permit smoking. The public hearing was adjourned at 9:00 p.m.

Another public hearing was held on June 12, 2003 at 5:30 p.m. in City Council Chambers. Seventy-three people signed up to speak. In addition to the concerns voiced in the previous meeting, some discussion centered on whether the smoking ban was a civil liberties, economic or a public health issue. The hearing was adjourned at 9:30 p.m.

Based on citizen input and direction of the Mayor and consensus of the City Council, this item was postponed in June to achieve a compromise proposal which is embodied in the attached ordinance draft to prohibit smoking in all public areas, including places of employment, with the following exceptions: bars; bars located in enclosed areas of restaurants; designated enclosed dining areas of restaurants, designated outdoor seating areas of restaurants; bingo facilities; billiard halls; designated smoking rooms in hotels and motels; retail tobacco stores; conference or meeting rooms and assembly rooms used for private functions; and designated private and semiprivate rooms in nursing homes and long-term care facilities.

In addition, the ordinance proposes to require that exempted bars, bingo facilities, billiard halls and enclosed designated dining areas prohibit all persons under the age of eighteen (18) from entering. However, these businesses may designate no smoking hours during which persons under age eighteen (18) may be admitted. Exempted establishments must post a standard sign notifying potential patrons that the establishment allows smoking and that secondhand smoke may cause negative health effects.

The proposed ordinance does not regulate smoking in private residences, except when used as a licensed childcare, adult day care, or health care facility. In addition, the ordinance permits smoking in outdoor seating areas of restaurants.

The effective date for the code revisions is proposed to be January 1, 2004.

POLICY ANALYSIS

Passage of the revised proposal is consistent with the responsibility of the City Council to protect the health and well-being of its residents and visitors. This action may be justified through numerous scientific studies indicating that: 1) Tobacco smoke contains several known carcinogens and is a major cause of lung cancer and other chronic illnesses. 2) Secondhand smoke can have serious deleterious health effects, especially on children, the elderly, and individuals with respiratory diseases.

The Economic Development Department assessed the economic impact of an ordinance that would restrict smoking in public places. The research was limited to the effect of a more restrictive policy of restaurant and bar sales only. The study concluded that, although there may be variations from one business to another, on balance a more restrictive smoking ordinance would not have a significant impact on local businesses.

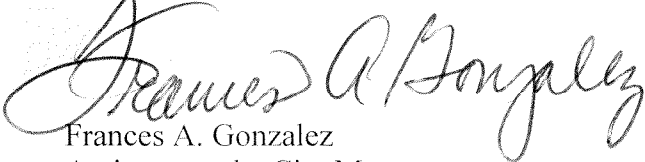
On July 22, 2003, the Advisory Board of Health voted to support a ban on smoking in public places.

FISCAL IMPACT

Sanitarians from the San Antonio Metropolitan Health District will have the primary responsibility for enforcement of any new smoking regulations. This ordinance provides for fees to be established at a later date to offset additional inspection and program costs which will be reasonable to insure compliance of establishments which elect to permit smoking in accordance with Section 36-6 of the ordinance. The fees to be established will be effective on January 1, 2004 to coincide with the effective date of the ordinance.



Fernando A. Guerra, M.D., M.P.H.
Director of Health



Frances A. Gonzalez
Assistant to the City Manager

APPROVED BY:



Terry M. Brechtel
City Manager

AN ORDINANCE

REVISING CITY CODE CHAPTER 36, ENTITLED, "SMOKING" TO MAKE NECESSARY CHANGES, REVISIONS, AND DELETIONS REGULATING SMOKING IN CERTAIN ESTABLISHMENTS WITHIN THE CITY OF SAN ANTONIO CITY LIMITS; AND PROVIDING FOR PENALTIES.

* * * * *

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen (U.S. DHHS, 2000, citing Cal. EPA, 1997); and

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

WHEREAS, it has been determined that children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and

WHEREAS, the Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation; and

WHEREAS, smoke-filled workplaces can result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety; and

WHEREAS, accordingly, the City Council of San Antonio finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke-free air, recognizing that the need to breathe smoke-free air shall have priority over the desire to smoke; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 36 of the City Code of the City of San Antonio is hereby revised to read as follows, whereby added language is signified by underline, and deleted language is signified by strikethrough and is bracketed:

Section 36-1. Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in

this Section:

1. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets, and in which at least ninety percent (90%) of gross sales must be from the sale of alcoholic beverages.
2. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
3. "Cigarette vending machine" means any self-service device which, upon insertion of coin(s), paper currency, token(s), card(s) or key(s) or any other item(s) dispenses one (1) or more cigarettes, as defined above, provided that the term shall neither be deemed to include any machine that is in storage, in transit or otherwise not set up for use and operation nor be deemed to include any machine that is situated on a train, bus or other public conveyance.
4. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
5. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
6. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling, except up to fifty percent (50%) of one wall may be open to an adjoining room.
7. "Enclosed Bar Area" means all space in a bar between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling, except up to fifty percent (50%) of one wall may be open to an adjoining room. Food may be served in an enclosed bar area. If an enclosed bar area is within a restaurant, (a) it must be separate and enclosed from the general seating area of the restaurant, (b) any opening to an adjoining room must be at least ten (10) feet from the closest general seating of the restaurant, and (c) the enclosed bar area may not exceed twenty percent (20%) of the restaurant's total floor space; provided, however, that for enclosed bar areas existing prior to the effective date of Ordinance No. _____, the requirement that the enclosed bar area not exceed twenty percent (20%) of the restaurant's total floor space is not a requirement to obtaining a smoking designation for such enclosed bar area.
8. "Enclosed Dining Area" means all space in a restaurant between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling, except up to fifty percent (50%) of one wall may be open to an adjoining room. The enclosed dining area may not exceed twenty percent (20%) of the restaurant's total floor space.
9. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological

conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

10. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

11. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

12. "Private Function" means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining, where membership or specific invitation is a prerequisite to entry and where the event is not intended to be open to the public.

13. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

14. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

15. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

16. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

17. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

18. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

19. "Stand-alone Bar" means a bar not located within a restaurant.

{Sec. 36-1. Definitions.

~~In this chapter:~~

(1) — ~~Administrative area~~ means the area of an establishment not generally accessible to the public, including but not limited to individual offices, stockrooms, employee lounges, or meeting rooms.

(2) — ~~Director~~ means the director of the department designated by the city manager to enforce and administer this chapter or the director's designated representative. The fire marshal of the City of San Antonio and the director of the Metropolitan Health District are designated by the city manager as the specific persons to enforce provisions of the smoking regulations of the City of San Antonio.

(3) — ~~Employee~~ means any person who is employed by any employer for direct or indirect monetary wages or profit, or is in a position that would lead one to believe that such person is so employed.

(4) — ~~Employer~~ means any person, partnership, corporation, association or other entity, that employs one or more persons.

(5) — ~~Enclosed~~ means closed in by a roof and walls with appropriate openings for ingress and egress, but does not include areas commonly described as public lobbies.

(6) — ~~Food establishment~~ means any operation defined as such in section 13-1 et seq. of this Code.

(7) — ~~Hospital~~ means any institution that provides medical, surgical, and overnight facilities for patients.

(8) — ~~Movie theater~~ means any establishment engaged in the business of exhibiting motion pictures to the public.

(9) — ~~Retail and service establishment~~ means any establishment which offers goods or services for sale to the general public.

(10) — ~~Public service area~~ means any area to which the general public routinely has access for municipal services or which is designated a public service area in a written policy.

(11) — ~~Public place~~ means any enclosed indoor area that may be used by the general public, and includes, but is not limited to: stores, offices, and other commercial establishments; restaurants; public and private institutions of higher education; and health care facilities.

(12) — ~~Service line~~ means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

(13) — ~~Smoke or smoking~~ includes the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or device, and the lighting of, emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

(14) — ~~Workplace~~ means any enclosed area of a structure, or portion thereof, intended for occupancy by employees who provide primarily clerical, professional, or business services of a business entity, or which provide primarily clerical, professional, or business services to other business entities, or to the public, at that location. The enclosed indoor area under the control of the employer shall include those areas to which employees have access during the course of

employment, including, but not limited to work areas, employee lounges, employee restrooms, employee conference rooms, and employee cafeterias. A private residence is not a place of employment.

(15) ~~Common mall area~~ shall mean the enclosed portions of a shopping mall or airport mall that are not under the control of any single tenant, and which may be used by the public for sitting and walking from business to business as well as for commercial kiosks and common dining areas not under the control of any one food establishment.

(16) ~~Common work area~~ shall mean all portions of an indoor workplace that is not assigned as a work station for a particular employee and which is open and accessible to more than one employee in the ordinary course of business; such area does not include assigned single occupant offices with floor to ceiling walls or partitions and closable doors.

(17) ~~Cigarette~~ means:

- a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco; and
- b. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (17)a., above.

(18) ~~Cigarette vending machine~~ means any self service device which, upon insertion of coin(s), paper currency, token(s), card(s) or key(s) or any other item(s) dispenses one (1) or more cigarettes, as defined above, provided that the term shall neither be deemed to include any machine that is in storage, in transit or otherwise not set up for use and operation nor be deemed to include any machine that is situated on a train, bus or other public conveyance.

(Ord. No. 62781, § 1(1), 4-24-86; Ord. No. 75573, § 1, 4-2-92; Ord. No. 85370, § 1, 12-19-96)]

Section 36-2. Application of Chapter to City-Owned Facilities.

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of San Antonio, shall be subject to the provisions of this Chapter.

[Sec. 36-2. Sampling, cigarette machines, smoking prohibited in certain public places.

(a) ~~A person commits an offense if he smokes or possesses a burning tobacco product, lighted cigar, cigarette, or any lighted smoking product in any of the following indoor public places:~~

- (1) ~~An elevator used or may be used by the public;~~
- (2) ~~A hospital or nursing home corridor providing direct access to patients' rooms;~~
- (3) ~~Any conference room, meeting room, or public service area of any facility owned, operated, or managed by the city; except those conference rooms and meeting rooms that are not generally open to the public;~~
- (4) ~~Any retail and service establishment or financial institution serving the general public, including, but not limited to, any department store, grocery store, drug store, clothing store, shoe store, hardware store, bank, savings and loan, credit union, laundromat, hair salon or barbershop, waiting room of a public transportation facility, including but not limited to, a bus facility, a train facility, the common area of any city-owned theater, city-owned concert hall, or city-owned cultural facility, and except for designated smoking areas, smoking shall be prohibited in the common mall area of a shopping mall or municipal airport;~~

(5) — ~~An area marked with a "No Smoking" sign in accordance with subsection (b) by the owner or person in control of a hospital, nursing home, or retail or service establishment serving the general public;~~

(6) — ~~Any facility of a public primary or secondary school; or an enclosed theater, motion picture theater, library, museum, and transportation vehicles, such as buses and taxicabs; except on chartered buses for private hire or in taxicabs clearly designated by the operator to permit smoking; or~~

(7) — ~~All rooms in which meetings and/or hearings are open to the public.~~

(b) — ~~The owner or person in control of an establishment or area designated in subsection (a) of this section shall post a sign, conspicuous to ordinary public view, at or near each public entrance to the establishment. The sign shall contain the words "No Smoking except in Designated Areas, City of San Antonio Ordinance" the universal symbol for no smoking, or other language that clearly prohibits smoking.~~

(c) — ~~Every hospital shall:~~

(1) — ~~Allow all patients, prior to elective admission, to choose to be in a no smoking patient room; and~~

(2) — ~~Require that employees or visitors obtain express approval from all patients in a patient room prior to smoking.~~

(d) — ~~The owner or person in control of an establishment or area described in subsection (a)(4) or (a)(6) of section 36-2 may designate an area, including but not limited to lobbies, meeting rooms, waiting rooms, or lounges, as a smoking area; provided that the designated smoking area may not:~~

(1) — ~~Include the entire establishment;~~

(2) — ~~Include cashier areas, over the counter service or sales areas, or service lines;~~

(3) — ~~Include the viewing area of any theater or motion picture theater; or~~

(4) — ~~Be larger in size than thirty (30) percent of the common area of the establishment.~~

(e) — ~~It is a defense to prosecution under this section if the person was smoking:~~

(1) — ~~In a location that is a designated smoking area of a facility or establishment described in subsection (a)(4) or (a)(6) of this section which is posted as a designated smoking area with appropriate signs;~~

(2) — ~~In a location that is an administrative area or office area of an establishment described in subsection (a)(4) or (a)(6) of this section;~~

(3) — ~~In a location that is a retail or service establishment serving the general public with less than seven hundred fifty (750) square feet of public showroom or service space or having only one employee on duty, unless posted as designated in subsection (a)(5) of this section;~~

(4) — ~~In a location that is a retail or service establishment which is primarily engaged in the sale of tobacco, tobacco products or smoking implements;~~

(5) — ~~In a retail or service establishment which is a food establishment regulated by section 36-3;~~

(6) — ~~As a participant in an authorized theatrical performance; or~~

(7) — ~~In a situation in which the person is present at an event in which an entire room or hall is used for a social function sponsored by a private entity or individual and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the place. However, the sponsor of the social function may designate a~~

smoking area. This provision does not apply to events held in the Multipurpose Domed Stadium Facility.

(f) ~~Sampling. Distribution of free samples of smoking tobacco products or smoking paraphernalia on any public right of way, city park or any city owned building or facility is hereby prohibited.~~

(g) ~~Cigarette vending machines.~~

(1) ~~Subject to the defenses provided in subsection (2) below, it shall be unlawful for any business owner, manager and employee in control of cigarette vending machines within the city to intentionally, knowingly, recklessly, or with criminal negligence allow the display or use of any cigarette vending machine upon any property within the city.~~

(2) ~~It is a defense to prosecution under the provisions of section 36-1(16.) that:~~

a. ~~The cigarette vending machine is situated in a premise where entry by any person under eighteen (18) years of age is prohibited by law; or~~

b. ~~The cigarette vending machine is located in a workplace with the permission of the employer, provided that the employer has no persons under the age of eighteen (18) employed at the workplace, and further provided that the cigarette vending machine is situated at a location within the workplace to which persons other than those employed at the workplace are not permitted to have access.~~

(3) ~~Penalty. A violation of this subsection (g) is hereby declared to be a misdemeanor crime, and upon conviction, shall be punishable by a fine of not more than two thousand dollars (\$2,000.00).~~

(Ord. No. 62781, § 1(2), 4-24-86; Ord. No. 71795, § 3, 6-28-90; Ord. No. 75573, § 1, 4-2-92; Ord. No. 85370, § 2, 12-19-96)

Section 36-3. Prohibition of Smoking in Public Places.

Smoking shall be prohibited in all enclosed public places within the City of San Antonio, including but not limited to, the following places:

1. Aquariums, galleries, libraries, and museums;
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels;
3. Convention facilities;
4. Elevators;
5. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;
6. Health care facilities;
7. Licensed child care and adult day care facilities;
8. Lobbies, hallways, and other common areas in apartment buildings, condominiums,

trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;

9. Polling places;

10. Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots;

11. Restaurants, except for enclosed bar areas, enclosed dining areas and outdoor seating areas designated as smoking in accordance with Section 36-8 D. of this Chapter; provided, however, that (a) all enclosed bar areas and outdoor seating areas so designated as smoking shall provide a non-smoking area therein, (b) persons under the age of eighteen (18) years shall not be admitted in any enclosed bar area or enclosed dining area so designated as smoking, and (c) a restaurant may only have either an enclosed bar area or an enclosed dining area and may not have both.

12. Restrooms, lobbies, reception areas, hallways, and other common-use areas;

13. Retail stores;

14. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City;

15. Service lines;

16. Shopping malls; and

17. Sports arenas, including enclosed areas in outdoor arenas.

[Sec. 36-3. Regulation of smoking in food establishments.

~~(a) — A food establishment which has indoor or enclosed dining areas shall provide separate indoor or enclosed dining areas for smoking and nonsmoking patrons.~~

~~(b) — A nonsmoking area must:~~

- ~~(1) — Be separated from the smoking areas by a minimum of four (4) feet of contiguous floor space, a partition, or a wall;~~
- ~~(2) — Be ventilated and situated so that air from the smoking area is not drawn into or across the nonsmoking area, or the smoking area shall be separately ventilated;~~
- ~~(3) — Be clearly designated by appropriate signs visible to patrons within the dining area indicating that the area is designated nonsmoking; and~~
- ~~(4) — Have ash trays or other suitable containers for extinguishing smoking materials at the perimeter of the nonsmoking area.~~

~~(c) — Each food establishment which has a dining area shall:~~

- ~~(1) — Have and implement a written policy on smoking which conforms to this chapter;~~
- ~~(2) — Make the policy available for inspection by employees and the director or his authorized representatives; and~~
- ~~(3) — Have signs, conspicuous to ordinary public view, at each public entrance to the establishment indicating that nonsmoking seating is available.~~

(d) ~~— Nondining areas of any food establishment affected by this section to which patrons have general access, including, but not limited to, food order areas, food service areas and restrooms, shall be designated as nonsmoking areas.~~

(e) ~~— It is a defense to prosecution under this section that the food establishment is:~~

~~(1) — An establishment which has indoor seating arrangements for less than fifty (50) patrons;~~

~~(2) — An establishment which has more than seventy (70) percent of its annual gross sales in alcoholic beverages; or~~

~~(3) — A physically separated bar area of a food products establishment otherwise regulated.~~

~~(4) — The establishments covered above in (e)(1) through (e)(3) of this subsection shall post a sign, conspicuous to ordinary public view, at each public entrance to the establishment which shall contain the words "This Establishment Does Not Provide For A Non Smoking Section."~~

(f) ~~— A person commits an offense if he smokes or possesses a burning tobacco, weed, or other plant product, or any lighted or burning pipe, cigar, cigarette of any kind, or smoking device in an area of a food products establishment designated as nonsmoking.~~

(Ord. No. 62781, § 1(3), 4-24-86)]

Section 36-4. Prohibition of Smoking in Places of Employment.

A. Smoking shall be prohibited in all enclosed areas within places of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed areas.

B. This prohibition on smoking shall be communicated by employers to all existing employees by the effective date of this Chapter and to all prospective employees upon their application for employment.

[Sec. 36-4. Regulation of smoking in the workplace.

(a) ~~— Applicability. Except where the provisions of this section conflict with the provisions of sections 36-2 and 36-3, every workplace and portion thereof shall be governed by this section.~~

(b) ~~— Voluntary effort. Every employer is hereby encouraged, on a voluntary basis and in cooperation with members of the Chambers of Commerce and the Tri-Agency Coalition, to restrict or eliminate smoking in common areas of the workplace and to prohibit smoking in public areas of all business establishments. The goal is to achieve eighty (80) percent worksites participation of the two (2) provisions over a two-year period.~~

(c) ~~— Tri-Agency's method to achieve goal. The Tri-Agency Coalition consisting of the American Cancer Society, American Heart Association, and the American Lung Association, will provide "how to" assistance utilizing their existing resources, programs and speakers in conjunction with the City of San Antonio Department of Health advisers, to establish a smoking policy to become a smoke free workplace or to establish restrictions on smoking and possession~~

~~of any burning tobacco or other plant product while in the common work area of any indoor office, shop, laboratory, or other indoor work places, including hall ways, storage rooms, kitchens, snack rooms, vending machine rooms, office libraries, rooms where document copy machines and fax machines are used by more than one employee, and other rooms not assigned to a particular employee as his work station.~~

- ~~(d) — Chambers of Commerce effort to achieve goal. The Greater Chamber of Commerce will:~~
- ~~(1) — coordinate the business community and will provide access for the city and Tri-Agency public information support by hosting symposiums on how to convert to a smoke free environment;~~
 - ~~(2) — include informational material in its mailings and publications, and~~
 - ~~(3) — periodically sample its membership to track the success of this effort.~~

~~(Ord. No. 62781, § 1(4), 4-24-86; Ord. No. 75573, § 1, 4-2-92)]~~

Section 36-5. Sampling, Cigarette Machines.

A. Sampling. Distribution of free samples of smoking tobacco products or smoking paraphernalia on any public right-of-way, City park or any City-owned building or facility is hereby prohibited.

B. Cigarette vending machines.

(1) Subject to the defenses provided in subsection (2) below, it shall be unlawful for any business owner, manager and employee in control of cigarette vending machines within the City to intentionally, knowingly, recklessly, or with criminal negligence allow the display or use of any cigarette vending machine upon any property within the City.

(2) It is a defense to prosecution under the provisions of section 36-5 B. of this Chapter that:

a. The cigarette vending machine is situated in a premise where entry by any person under eighteen (18) years of age is prohibited by law; or

b. The cigarette vending machine is located in a workplace with the permission of the employer, provided that the employer has no persons under the age of eighteen (18) years employed at the workplace, and further provided that the cigarette vending machine is situated at a location within the workplace to which persons other than those employed at the workplace are not permitted to have access.

(3) Penalty. A violation of this subsection 36-5 B. is hereby declared to be a misdemeanor crime, and upon conviction, shall be punishable by a fine of not more than two thousand dollars (\$2,000.00).

[Sec. 36-5. Penalties.

~~Any person, firm, corporation, agent, or employee who violates any provision of the ordinances codified in this chapter shall, upon conviction, be fined an amount not more than two hundred dollars (\$200.00); provided, however, in the event a defendant has previously, however, in the event a defendant has previously been convicted under this chapter, defendant shall be fined an amount not more than five hundred dollars (\$500.00) for a second conviction hereunder, and shall be fined an amount not more than two thousand dollars (\$2,000.00) for a third conviction~~

~~hereunder and for each conviction thereafter. Each day that a violation is committed or permitted to exist shall constitute a separate offense.~~

(Ord. No. 62781, § 1(5), 4-24-86; Ord. No. 75573, § 1, 4-2-92)]

Section 36-6. Where Smoking Not Regulated.

Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be exempt from the provisions of Sections 36-3 and 36-4 of this Chapter:

1. Billiard Halls, where the establishment uses more than fifty percent (50%) of the premises for operational pool tables, provided that food sales constitute less than ten percent (10%) of gross sales, and persons under the age of eighteen (18) years are not admitted. Billiard halls may establish no smoking hours during which persons under eighteen (18) may be admitted;
2. Bingo facilities, provided that food sales constitute less than ten percent (10%) of gross sales, and persons under the age of eighteen (18) years are not admitted. Bingo facilities may establish no smoking hours during which persons under eighteen (18) may be admitted;
3. Enclosed Bar Areas within restaurants provided that the bar is in an enclosed area where persons under the age of eighteen (18) years are not admitted, and no restaurant seating is located within ten (10) feet of a partially enclosed wall; however, food may be served in the Enclosed Bar Area;
4. Enclosed Dining Areas within restaurants, provided that persons under the age of eighteen (18) years are not admitted and that neither the seating capacity or floor area of the Enclosed Dining Area exceeds 20% of the restaurant's total;
5. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated;
6. Outdoor seating areas of restaurants designated as smoking areas in accordance with Section 36-8 D. of this Chapter; provided, however, that a non-smoking area shall be provided in outdoor seating areas of restaurants so designated.
7. Private residences, except when used as a licensed child care, adult day care, or health care facility;
8. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted;
9. Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms, when these places are being used for private functions; provided, however, that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter;
10. Retail tobacco stores; provided, however, that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter; and

11. Stand-alone bars, where persons under the age of eighteen (18) years are not admitted.

[Sec. 36-6. Owner reporting requirements.

~~This chapter does not require the owner, operator, employer, manager or any employee of an establishment to report a violation or to take any action against any individual violating sections 36-1-36-4 of this chapter of the Code of the City of San Antonio, as amended.~~

~~(Ord. No. 62781, § 1(6), 4-24-86)]~~

Section 36-7. Declaration of Establishment as Nonsmoking.

Notwithstanding any other provision of this Chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 36-8 A. of this Chapter is posted.

[Sec. 36-7. Conflicting provisions.

~~This chapter shall be cumulative of all provisions of ordinances and of the Code of the City of San Antonio, Texas, as amended, except where the provisions of this chapter are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.~~

~~(Ord. No. 62781, § 1(7), 4-24-86)]~~

Section 36-8. Posting of Signs.

A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Chapter, by the owner, operator, manager, or other person in control of that place.

B. Every public place and place of employment where smoking is prohibited by this Chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

C. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Chapter by the owner, operator, manager, or other person having control of the area.

D. Areas which are exempt from the provisions of Sections 36-3 and 36-4 of this Chapter shall post a standard sign at each entrance, to be designated by the City of San Antonio informing potential patrons that the area allows smoking, and warning patrons of the negative health effects associated with secondhand smoke.

E. The City of San Antonio will provide the signs required under Section 36-8 D. of this Chapter

to the owners or operators required to comply with Section 36-8 D. at a reasonable and appropriate cost.

[Sec. 36-8. Severability, publication and effective date.

(a) ~~It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this chapter are severable, and if any phrase, clause, sentence, paragraph or section of this chapter shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Chapter, since the same would have been enacted by the city council without the incorporation in this chapter of any such unconstitutional phrase, clause, sentence, paragraph or section.~~

(b) ~~The city clerk of the City of San Antonio, Texas, is hereby directed to publish the caption and sections 36-5 and 36-8(c) of this chapter for one (1) day in the official newspaper of the City of San Antonio, Texas, as authorized by Article 1176b-1, Revised Civil Statutes of Texas.~~

(c) ~~This chapter shall be in full force and effect from and after September 1, 1986, and its passage and publication as required by law.~~

(Ord. No. 62781, § 1(8), 4-24-86)

Section 36-9. Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Chapter or reports or attempts to prosecute a violation of this Chapter.

A. This Chapter shall be enforced by the San Antonio Metropolitan Health Department, the Fire Department, or their authorized designees.

B. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the San Antonio Metropolitan Health Department.

C. The San Antonio Metropolitan Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter.

D. An owner, manager, operator, or employee of an establishment regulated by this Chapter shall inform persons violating this Chapter of the appropriate provisions thereof.

E. Notwithstanding any other provision of this Chapter, an employee or private citizen may bring legal action to enforce this Chapter.

F. In addition to the remedies provided by the provisions of this Section, the San Antonio Metropolitan Health Department, Fire Department, or their designees, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 36-10. Violations and Penalties.

Any person, firm, corporation, agent, employer or employee who violates any provision of this Chapter shall, upon conviction, be fined an amount not more than two hundred dollars (\$200.00); provided, however, that in the event a defendant has previously been convicted under this Chapter, such defendant shall be fined an amount not more than five hundred dollars (\$500.00) for a second conviction hereunder, and shall be fined an amount not more than two thousand dollars (\$2,000.00) for a third conviction hereunder and for each conviction thereafter. Each day that a violation is committed or permitted to exist shall constitute a separate offense.

Section 36-11. Additional Fee for Restaurants with Bars.

A reasonable fee to cover staff costs associated with inspections and program expenses may be charged by the City of San Antonio to the owner or operator of a restaurant in order to establish that (1) a bar and a dining area within a restaurant comply with the definition of an Enclosed Area as set forth in paragraph 6. of Section 36-1 of this Chapter, and (2) outdoor seating areas of restaurants designated as smoking areas are so designated in accordance with Section 36-6, paragraph 7 of this Chapter.

Section 36-12. Public Education.

The San Antonio Metropolitan Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this Chapter to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Chapter.

Section 36-13. Governmental Agency Cooperation.

The City Manager shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this Chapter. This includes urging all Federal, State, County and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Section 36-14. Other Applicable Laws.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 36-15. Severability.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Chapter are severable, and if any phrase, clause, sentence,

paragraph or section of this Chapter shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Chapter, since the same would have been enacted by the City Council without the incorporation in this Chapter of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 36-16. Effective Date.

This Chapter shall become effective on January 1, 2004.

SECTION 2. The City Clerk of the City of San Antonio, Texas, is hereby directed to publish this ordinance in a newspaper published in the City of San Antonio, Texas as authorized by Article II, Section 17 of the Charter of the City of San Antonio.

SECTION 3. This ordinance will become effective on the tenth (10th) day after passage hereof.

PASSED AND APPROVED this _____ day of August, 2003.

M A Y O R

ATTEST:

City Clerk

APPROVED AS TO FORM: _____
City Attorney